

## **EXHIBIT A**

### **STIPULATED FACTS**

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK**

UNITED STATES OF AMERICA, et al.,

Plaintiffs,

vs.

AMERICAN EXPRESS CO., et al.,

Defendant.

No. 10-CV-04496 (NGG) (RER)

**JOINT STATEMENT OF UNDISPUTED FACT**

1. General purpose payment cards can be used by consumers to purchase goods and services at a wide variety of merchants. Those cards include general purpose credit and charge (“GPCC”) cards as well as debit cards and prepaid cards.

2. Credit cards allow cardholders to pay for goods and services by accessing a line of credit extended by the entity that issued the card. The cardholder is invoiced for purchases typically once per month and has a grace period during which to make a payment. Cardholders can either pay off the balance in full each month or pay off the balance over time while accruing interest on the balance. Many credit card issuers impose a preset spending limit on cardholders’ outstanding credit amount, typically based on the cardholder’s creditworthiness.

3. Charge cards allow cardholders to pay for goods and services by accessing a line of credit extended by the entity that issued the card, but typically do not offer a revolving credit facility and generally require that cardholders pay the card balance in full each month. Some charge cards, however, do offer a revolving credit facility. Depending on when in the billing cycle a purchase is made, cardholders may not need to pay for several weeks. Charge cards typically do not have a preset spending limit.

4. Merchants’ demand for payment card acceptance is derived from consumers’ demand for payment card usage.

5. Consumers obtain credit or charge cards from card issuers, which are banks or financial institutions that issue the payment card to the consumer and bill the consumer for purchases made using the credit or charge card.

6. A cardholding consumer—either a household member or business employee—can use a credit, charge, debit or prepaid card to make purchases at merchants that

accept that brand of card. To do so, the merchant must have a relationship with an acquiring institution (acquirer).

7. An acquirer is a bank or financial institution that accepts card transaction data from a merchant for verification and processing.

8. For most large merchants (as measured by transaction volume), American Express itself serves as the acquirer for American Express transactions.

9. In the vast majority of instances (measured by either transaction number or volume) where American Express is the credit and charge card network, it is also the card issuer. In some instances, however, American Express relies on financial institutions to serve as issuers and acquirers.

10. MasterCard and Visa do not act as issuers or acquirers. Instead, MasterCard and Visa each provide certain core payment services and rely entirely on financial institutions to serve as issuers and acquirers.

11. Amex's business model is often referred to as a "three-party" model or "closed-loop" network because Amex operates the network and, for a large portion of its transactions, has relationships with cardholders and merchants.

12. When the merchant accepts the consumer's payment card for payment, swipes it, and transmits the transactional information to the acquirer, the acquirer in effect acquires the receivable owed by the cardholder arising from the cardholder's purchase. The acquirer thus has a payable obligation to the merchant.

13. The acquirer pays the merchant the purchase amount, less an amount called the "merchant discount fee". The merchant discount fee typically consists of an ad

valorem component (i.e., that is proportional to the dollar value of the transaction) and may include other fees.

14. On the Amex network, the merchant discount fee typically consists of an ad valorem component computed by multiplying a specified merchant discount rate by the dollar value of transaction. For a given merchant, the same merchant discount rate typically applies to all Amex credit or charge card products. For some transactions, Amex may also charge the merchant an additional fee.

15. On the Visa and MasterCard networks, the merchant discount fee is comprised of, among other things, an ad valorem interchange fee (calculated by multiplying an interchange rate by the transaction amount), a network fee, and an acquirer fee. Merchants may be charged additional fees as well.

16. Unlike the Amex network where the same merchant discount rate typically applies to all Amex credit or charge card products for a given merchant, the interchange rate a merchant is charged for a transaction on the Visa or MasterCard network can vary significantly by the card product presented. Specifically, Visa has more than 70 different interchange rate categories and MasterCard has more than 240 different interchange rate categories.

17. Generally, in debit transactions, the purchase amount is automatically deducted from the cardholder's account. In credit or charge transactions, the card issuer (which, in the case of Amex or Discover, may be the network as well) invoices the cardholder and is responsible for, and is at risk for, obtaining payment from the cardholder.

18. As of 2013, there were 254.1 million U.S.-issued Visa branded GPCC cards in circulation, 178.3 million U.S.-issued MasterCard branded GPCC cards in circulation,

63.6 million U.S.-issued Discover GPCC cards in circulation and 53.1 million U.S.-issued Amex GPCC cards in circulation.

19. As of 2013, there also were 431.2 million U.S.-issued Visa branded debit (and prepaid) cards in circulation and 158.3 million U.S.-issued MasterCard branded debit (and prepaid) cards in circulation.

20. As of 2013, Visa accounted for 45% of GPCC card purchase volume in the U.S., Amex accounted for 26.4%, MasterCard accounted for 23.3%, and Discover accounted for 5.3%.

21. As of 2012, Visa accounted for 49.6% of credit card, charge card, debit card, and prepaid card purchase volume in the U.S., MasterCard accounted for 23.4%, whereas Amex, which does not issue debit cards in the U.S., accounted for 14.0% of such volume.

22. As of 2013, approximately 9.4 million merchant locations in the U.S. accepted Visa and MasterCard credit and charge cards, 9.2 million accepted Discover and 6.4 million accepted Amex.